(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a settlement agreement in an amount not in excess of $1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.93 Claims not payable.

A claim is not allowable under §§ 536.90 through 536.97 that—

(a) Results wholly or partly from the negligent or wrongful act of the claimant, his or her agent or employee. The doctrine of comparative negligence is not applicable.

(b) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than provided in § 536.92(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering, are not payable.

(d) Is for loss of use of property or for the cost of a substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

§ 536.94 When claim must be presented.

A claim may be settled under §§ 536.90 through 536.97 only if it is presented in writing within 2 years after it accrues.

§ 536.95 Procedures.

So far as not inconsistent with §§ 536.90 through 536.97, the procedures for the investigation and processing of claims contained in §§ 536.1 through 536.13 will be followed.

§ 536.96 Settlement agreement.

A claim may not be paid under §§ 536.90 through 536.97 unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement (§ 536.10) is required before payment.

§ 536.97 Reconsideration.

(a) An approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim which was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of §§ 536.90 through 536.97 to a claim upon request of the claimant or someone acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

[FR Doc. 89-25242 Filed 10-26-89; 8:45 am]
BILLING CODE 3710-08-M

Federal Register

Friday
October 27, 1989

Part III

Department of Defense

Department of the Army

32 CFR Part 537

Claims on Behalf of the United States; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 537

Claims on Behalf of the United States

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a change of the regulatory provisions controlling the processing and settlement of administrative claims filed in behalf of the Army. This change will inform third parties of the procedures controlling the processing and settlement of these administrative claims by the Army.

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755–5360, (301) 677–7622.

SUPPLEMENTARY INFORMATION: The change to Part 537 reflects some procedural changes in the management of affirmative claims.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 537

Claims, Foreign claims, Tort claims.

Dated: October 11, 1989.

Jack F. Lane, Jr.,

Commanding, United States Army Claims Service, Office of The Judge Advocate General.

Part 537 is revised to read as follows:

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army

Authority: 10 U.S.C. 3012; sections 537.21 through 537.24 issued under 42 U.S.C. 2651–2653;

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

§ 537.1 General.

(a) *Purpose.* This section prescribes, within the limitations indicated in AR 27–20 (AR 27–20 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161), and in paragraph (b) of this section, the procedures for the investigation, determination, assertion, and collection, including compromise and termination of collection action, of claims in favor of the United States for damage to or loss or destruction of Department of the Army (DA) property.

(b) *Applicability and scope.* (1) Other regulations establish systems of property accountability and responsibility; prescribe procedures for the investigation of loss, damage, or destruction by causes other than fair wear and tear in the service; and provide for the administrative collection of charges against military and civilian personnel of the United States, contractors and common carriers, and other individuals and legal entities from whom collection may be made without litigation. When the investigation so prescribed results in preliminary indication of pecuniary liability, and no other method of collection is provided, the matter is referred for action under this section. This relationship exists with regard to—

(i) Property under the control of the DA.

(ii) Property of the Defense Logistics Agency in the custody of the DA.

(iii) Property of nonappropriated funds of the DA (except Army and Air Force Exchange Service property unless a special agreement exists). See AR 215–1 and AR 215–2.

(iv) Federal property made available to the Army National Guard (ARNG).

(2) This section does not apply to—

(i) Claims arising from marine casualties.

(ii) Claims for damage to property funded by civil functions appropriations.

(iii) Claims for damage to property of the DA and Air Force Exchange Service.

(iv) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(v) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(vi) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army, or the Department of Defense (DOD), for loss, damage, or destruction of personal property while in transit or storage at Government expense.

(3) The commander of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to establish procedures for the processing of claims in favor of the United States for loss, damage, or destruction of property which may, to the extent deemed necessary, modify the procedures prescribed herein. Two copies of all implementing directives will be furnished Commander, U.S. Army Claims Service (USARCS). Procedures will be prescribed—

(i) To carry out the provisions of DOD Directive No. 5515.8, assigning single service claims responsibility.

(ii) To carry out provisions of treaties and other international agreements which limit or provide special methods for the recovery of claims in favor of the United States.

(c) *Definitions.* For the purpose of this section only, the following terms have the meaning indicated:

(1) *Claim.* The Government's right to compensation for damage caused to Army property.

(2) *Prospective defendant.* An individual, partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, except an instrumentality of the United States, against whom the United States has a claim.

(3) *Damage.* A comprehensive term, including not only damage to, but also loss or destruction of Army property.

(4) *DA property.* Real or personal property of the United States or its instrumentalities and, if the United

States is responsible therefor, real or personal property of a foreign government, which is in the possession or under the control of the DA, one of its instrumentalities, or the ARNG, including that property of an activity for which the Army has been designated the administrative agency, and that property located in an area in which the Army has been assigned single service claims responsibility by appropriate DOD directive.

(5) *Major overseas command.* U.S. Army Europe; U.S. Army Forces Southern Command; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous States specially designated by The Judge Advocate General (TJAG) under the provisions of AR 27–20.

(6) *Area Claims Office.* The principal office for the investigation, assertion, adjudication and settlement of claims, staffed with qualified legal personnel under the supervision of a Staff Judge Advocate (SJA) or Command Judge Advocate or Corps of Engineers district or Command Legal Counsel under provisions of AR 27–20.

(7) *Recovery judge advocate (RJA).* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses and property damage.

(d) *Limitation of time.* The Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) established a 3-year statute of limitations, effective July 19, 1966, upon actions in favor of the United States for money damages founded upon a tort. In computing periods of time excluded under 28 U.S.C. 2416, the RJA concerned shall be deemed the official charged with responsibility and will ensure that action may be brought in the name of the United States within the limitation period.

(e) *Foreign prospective defendants.* Except as indicated below, claims within the scope of this section against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant. Claims against an international organization, a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such international organization or foreign government, will not be asserted without prior approval of TJAG. Investigation and report thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS, unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(f) *Standards of liability.* (1) The Government's right to compensation for damage caused to Army property will be determined in accordance with the law of the place in which the damage occurred, unless other law may properly be applied under conflict of law rules.

(2) To the extent that the prospective defendant's liability is covered by insurance, liability will be determined without regard to standards of pecuniary liability set forth in other regulations. If no insurance is available, claims will be asserted under this section against military and civilian employees of the United States and of host foreign governments only where necessary to complete the collection of charges imposed upon such persons under the standards established by other regulations.

(g) *Concurrent claims under other regulations.* (1) Claims for damage to DA property and claims for medical care cognizable under §§ 537.21 through 537.24 arising from the same incident will be processed under the sections applicable to each.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim or suit against the United States, the claim in favor of the Government will be asserted and otherwise processed only by an RJA who has apparent authority to take final action on the claim against the Government.

(h) *Repayment in kind.* The RJA who asserts a claim under this section may accept, in lieu of full payment of the claim, the restoration of the property to its condition prior to the incident causing the damage, or the replacement thereof. Acceptability of these methods of repayment is conditioned upon the certification of the appropriate staff officer responsible for maintenance, such as is described for motor vehicles in AR 735–5, before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

(i) *Delegation of authority.* Subject to the provisions of paragraph (k) of this section, the authority conferred by AR 27–20, to compromise claims and to terminate collection action, with respect to claims that do not exceed $20,000, exclusive of interest, penalties and administrative fees, is further delegated as follows:

(1) An Area Claims Office, as defined in paragraph (c)(6) of this section, is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than $10,000.

(ii) Terminate collection action, provided the uncollected amount of claim does not exceed $10,000.

(2) The SJA, or if so designated, the chief of the Command Claims Service of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to:

(i) Compromise claims, not over $20,000 without monetary limitations.

(ii) Terminate collection action, provided the uncollected amount of the claim does not exceed $20,000.

(j) *Compromise and termination of collection action.* (1) The authority delegated in paragraph (j) of this section to compromise claims will be exercised in accordance with the standards set forth in 4 CFR part 104.

(2) The authority delegated in paragraph (j) of this section to terminate collection action will be exercised in accordance with the standards set forth in 4 CFR part 104.

(3) A debtor's liability to the United States arising from a particular incident shall be considered as a single claim in determining whether the claim is not more than $20,000, exclusive of interest, penalties and administrative fees for the purpose of compromise, or termination of collection action.

(4) Only the Department of Justice may approve claims involving:

(i) Compromise or waiver of a claim asserted for more than $20,000 exclusive of interest, penalties and administrative fees.

(ii) Settlement actions previously referred to the Department.

(iii) Settlement where a third party files suit against the United States or the individual federal tortfeaser arising but of the same incident.

(k) *Releases.* The RJA who receives payment of the claim in full, or who receives full satisfaction of an approved compromise settlement, is authorized to execute a release. A standard form furnished by the prospective defendant or his insurer may be executed, provided no indemnity agreement is included.

(l) *Receipts.* The RJA may execute and deliver to a prospective defendant a receipt for payment in full, installment payment or an offered compromise payment, subject to approval of the SJA. DA Form 2135–R (Receipt for Payment for Damage to or Loss of Government Property) be used.

§ 537.2 Recovery of property unlawfully detained by civilians.

Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the procedures contained in AR 735–11, Para. 3–15, Unit Supply UPDATE 10, should be followed.

§ 537.6 Maritime casualties; claims in favor of the United States.

See 32 CFR 536.60, which covers claims on behalf of the United States as well as claims against the United States.

§ 537.7 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee, under the direction of the Secretary of Defense, is authorized by Army Maritime Claims Settlement Act of 1956 (70A Stat. 270), as amended (10 U.S.C. 4801–4804, 4806).

(b) *Related statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought; the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790); the Extention of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code (U.S.C.), sections 7365, 7621–7623, and by the Department of the Air Force under 10 U.S.C. 9801 through 9804, 9806.

(c) *Scope.* (1) Section 4803 of title 10, U.S.C., provides for the settlement or compromise of claims of a kind that are within the admiralty jurisdiction of a district court of the United States and of claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the Department has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed $500,000.

(2) Section 4804 of title 10, U.S.C., for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA for any vessel. The amounts of claims for salvage services are based upon per diem rates for the use of salvage vessels and other equipment; and materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis, in accordance with commercial practice, in an appropriate case.

(d) *Amounts exceeding $500,000.* Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding $500,000 payable to the United States. However, all such claims otherwise within the scope of this section will be investigated and reported to the Commander, USARCS.

(e) *Civil works activities.* Rights of the United States to fines, penalties, forfeitures, or other special remedies in connection with the protection of navigable waters, the control and improvement of rivers and harbors, flood control, and other functions of the Corps of Engineers involving civil works activities, are not dealt with in this section. However, claims for money damages which are civil in nature, arising out of civil works activities of the Corps of Engineers and otherwise under this section, for which an adequate remedy is not available to the Chief of Engineers, may be processed under this section.

(f) *Delegation of authority.* Where the amount to be received by the United States is not more than $10,000, claims under this section, except claims for salvage services, paragraph (c)(2) of this section, may be settled or compromised by the Commander, USARCS, or designee, subject to such limitations as may be imposed by the Commander, USARCS and by engineer area claims offices, subject to such limitations as may be imposed by the Chief of Engineers.

(g) *Demands.* Demand for the payment of claims in favor of the United States under this section may be made by the Commander, USARCS, or designee.

Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army

§ 537.21 General.

(a) *Authority.* The regulations in §§ 537.21 through 537.24 are in implementation of the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651–3), Executive Order Number 11060 (27 FR 10925), and Attorney General's Order Number 289–62, as amended (28 CFR part 43), providing for the recovery of the reasonable value of medical care furnished or to be furnished by the United States to a person on account of injury or disease incurred after December 31, 1962, under circumstances creating a tort liability upon some third person.

(b) *Applicability and scope.* (1) Sections 537.21 through 537.24 apply to all claims for the reasonable value of medical services furnished by or at the expense of the Army which result from incidents occurring on or after March 1, 1969. Cases which arise from incidents occurring prior to that date:

(i) And which are the responsibility of an SJA or JA who is designated an RJA will be processed under §§ 537.21 through 537.24;

(ii) And which are the responsibility of an SJA or JA not so designated will be processed under the predecessor regulation until either completed or transferred.

(2) The procedures prescribed herein are to be employed within the DA for the investigation, determination, assertion, and collection, including compromise and waiver, in whole or in part, of claims in favor of the United States for the reasonable value of medical services furnished by or at the expense of DA. TJAG provides general supervision and control of the investigation and assertion of claims arising under the Federal Medical Care Recovery Act.

(3) In Continental U.S., Army SJA's and RJA's will be assigned responsibility under §§ 537.21 through 537.24 on a geographical area basis.

(4) The commander of any major overseas command specified in paragraph (c)(5) of this section is authorized to modify the procedures prescribed herein to accommodate any special circumstances which may exist in the command.

(5) Claims for medical care furnished by the DA on a reimbursable basis (see table 1, AR 40–3) ordinarily will be forwarded for processing directly to the Federal department or agency responsible for reimbursement.

(c) *Definitions.* For the purpose of §§ 537.21 through 537.24 only, the following terms have the meaning indicated.

(1) *Claim.* The Government's right to recover from a prospective defendant the reasonable value of medical care furnished to each injured party.

(2) *Medical care.* Includes hospitalization, out-patient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

(3) *Injured party.* The person who received an injury or contracted a disease which resulted in the medical care. Such person may be an active duty or retired member, a dependent, or any

other person who is eligible for medical care at DA expense. See section III, AR 40-3, and §§ 577.60 through 577.71 of this chapter.

(4) *Prospective defendant.* A person other than the injured party. An individual partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, against whom the United States has a claim.

(5) *Major overseas command.* U.S. Army Forces Southern Command; the U.S. Army, Europe; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous states specially designated by TJAG under the provisions of AR 27-20.

(6) *Recovery judge advocate.* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses.

§ 537.22 Basic considerations.

(a) *The right of recovery*—(1) *Applicable law.* The right of the United States to recover the reasonable value of medical care furnished or to be furnished an injured party is based on the Federal Medical Care Recovery Act. It accrues simultaneously with the accrual of the injured party's right to recover damages from the prospective defendant but is independent of any claim which the injured person may have against the prospective defendant. Recovery is allowed only if the injury or diseases resulted from circumstances creating a tort liability under the law of the place where the injury occurred.

(2) *Time limitation.* The Act of 18 July 1966 (28 U.S.C. 2415 et seq.) establishes a 3-year statute of limitation upon actions in favor of the United States for money damages founded upon a tort. The RJA will take appropriate steps within the limitation period to assure that necessary legal action is not barred by the statute.

(3) *Amount.* The Government's right of recovery is limited to amounts expended or to be expended by the United States for medical care from other than Federal sources, and to amounts determined by the rates established by the Office of Management and Budget for medical care from Federal sources, less any amounts reimbursed by the injured party.

(b) *Certain prospective defendants*—(1) *U.S. Government agencies.* No claim will be asserted against any department, agency, or instrumentality of the United States.

(2) *U.S. personnel.* Claims against a member of the uniformed services; or an employee of the United States, its agencies or instrumentalities; or a dependent of a service member or an employee will not be asserted unless the prospective defendant has the benefit of liability insurance coverage or was guilty of gross negligence or willful misconduct. If simple negligence occurring in the scope of a member's or employee's employment is the basis of the claim, no claim will be asserted if such claim is excluded from the coverage of the liability insurance policy involved. No claim, in the absence of specific statutory authorization, will be made directly against a member or employee, or his or her dependents for injuries sustained to himself or herself through acts of simple negligence, gross negligence, or willful misconduct.

(3) *Government contractors.* Claims, the cost or expense of which may be reimbursable by the United States under the terms of a contract, will not be asserted against a contractor without the prior approval of USARCS. Such claims will be investigated and the report thereof, which will include citation to the specific contract clauses involved and recommendations regarding assertion will be forwarded through command channels to Commander, USARCS.

(4) *Foreign persons.* Claims within the scope of §§ 537.21 through 537.24 against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant, unless such action is precluded by treaty or international agreement. Claims against an international organization, or foreign government, will be investigated and reports thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS.

(5) *National Guard Members.* Claims arising from the tortious conduct of NG members will be investigated and if assertion appears appropriate, a recommendation shall be made to Commander, USARCS.

(c) *Concurrent claims under other regulations*—(1) *Section 537.1.* Claims for medical care and claims for damage to DA property arising from the same incident will be processed by the RJA in accordance with § 537.1(g). If an RJA lacks settlement authority sufficient to settle a concurrent claim under § 537.1, he may request additional authority under that section from the appropriate major overseas command SJA or area claims authority, who may delegate such additional authority in an amount not exceeding his own settlement authority. Where time is of the essence, telephonic delegations of authority are encouraged, provided they are confirmed in a writing which will be made a part of the case file.

(2) *Counterclaims.* Claims for medical care and claims against the United States which arise from the same incident will be processed by the RJA in accordance with § 537.1(g)(2). If an RJA lacks authority sufficient to settle the claim against the Government, he will coordinate his action with that claims echelon which has the necessary authority to settle the particular claim against the United States.

§ 537.23 Predemand procedures.

(a) *Relations with the injured party*—(1) *Advice.* The injured party, or, in appropriate cases, his guardian, next-of-kin, personal representative, or the executor or administrator of his estate, will be advised of the following:

(i) That under the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3, the United States may be entitled to recover the reasonable value of medical care furnished or to be furnished him in the future from the person or persons who injured him, or who were otherwise responsible for his injury or disease; and

(ii) That if he is otherwise entitled to legal assistance under AR 27-3, he should seek guidance from a legal assistance officer regarding any claim he may have for personal injury; and

(iii) That he is required to cooperate in the prosecution of all actions of the United States against the person or persons who injured him; and

(iv) That he is required to furnish a complete statement regarding the facts and circumstances surrounding the incident which resulted in the injury or disease; and

(v) That he is required to furnish information concerning any legal action brought or to be brought by or against the prospective defendant, or to furnish the name and address of the attorney representing him; and

(vi) That he should not execute a release or settle any claim which he may have as a result of his injury without first notifying the RJA.

(2) *Statement.* A written statement will be obtained from the injured party, or his representative, in which he acknowledges receipt of the advice in paragraph (a)(1) of this section, and provides the information required by paragraphs (a)(1) (iv) and (v) of this section. If the injured party or representative fails or refuses to furnish necessary information or cooperation, the originator of the notification of potential claims may be requested to withhold records as to medical history, diagnoses, findings, and treatment, from

the injured party or anyone acting on his behalf pending compliance with the requirements in paragraph (a)(1) of this section. Mere refusal by the injured party or his representative to include the Government's claim in his claim is not sufficient basis, by itself, for this action.

(b) *Determination and assertion*—(1) *Liability.* The RJA will review all the evidence including any claims officer's report of investigation and, after assuring completeness of the file, will make a written determination as to the liability of the prospective defendant and note his reasons for such determination.

(2) *Value.* If the RJA determines that the prospective defendant is liable, he will also ascertain the reasonable value of medical care furnished or to be furnished to the injured party, in accordance with § 537.22(a)(3) and rates established by the Office of Management and Budget. When a military member has been retained in a military hospital for administrative reasons, or where the patient was absent from the hospital or was in a purely convalescent status, the amount of the claim will be recomputed to apply the outpatient rate, if under circumstances warranting only outpatient treatment in a civilian hospital or eliminate such periods altogether if the injured party received no treatment during those periods. In making these determinations the RJA will coordinate with the registrar or other responsible official of the hospital or medical unit in his area of responsibility.

(3) *Amount.* In the event of doubt concerning the extent of medical care furnished or to be furnished an injured party, the RJA will assert the claim in an indefinite amount. Demand will be made in a definite amount at the earliest possible date, based on an estimate of a reasonable value of medical care to be furnished, if appropriate. The RJA will assure that the file contains complete statements of the value of medical care furnished, including all charges by civilian physicians, medical technicians and civilian hospitals.

§ 537.24 Post demand procedures.

(a) *Coordination with the injured party's claim.* (1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished or to be furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the claim on behalf of the government as an item of special damages with the injured party's claim or suit except where prohibited by law. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees may be neither paid by the Government (5 U.S.C. 3106) nor computed on the basis of the Government's portion of the recovery. The agreement must also require the Government's permission to settle its claim.

(3) If the injured party, denies or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(b) *Independent collection action.* Unless suit between the injured party and the prospective defendant is pending, all available administrative collection procedures will be followed prior to reference of the claim to the Department of Justice under paragraph (e) of this section. Direct contact with the prospective defendant's insurer, if known, is desirable. If the prospective defendant is an uninsured motorist, timely and appropriate action will be taken to collect the claim, or to request suspension of driving and registration privileges under the applicable uninsured motorist fund statute, or to seek compensation from the victim's insurer, or otherwise under financial responsibility laws.

(c) *Delegation of authority.* Subject to the provisions of paragraphs (d) and (e) of this section, authority to compromise or waive, in whole or in part, claims of the United States not in excess of $40,000 exclusive of interest penalties and administrative fees is delegated as follows. The Area Claims Office as defined in paragraph (c)(6) of section 537.1 is authorized to:

(1) Compromise claims, provided the compromise does not reduce the claim by more than $15,000 in any claim not asserted for more than $25,000; and

(2) Waive claims for the convenience of the Government (but not on account of undue hardship upon the injured party) provided the uncollected amount of the claim does not exceed $15,000 in any claim not asserted for more than $25,000; and

(3) Redelegation in an amount not to exceed $5,000 compromise authority to any claim processing office with approval authority is permitted.

(d) *Compromise and waiver of claims*—(1) *General.* A debtor's liability to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is not more than $40,000, for the purpose of compromise or waiver. Claims not resolved within the delegation of authority stated in this section or referred to the Department of Justice, will be forwarded to Commander, USARCS. A claim file forwarded to higher authority will contain a memorandum of opinion supported by necessary exhibits.

(2) *Compromise.* (i) The authority delegated in paragraph (c) of this section to compromise claims will be exercised in accordance with standards set forth in 4 CFR 103. When available funds are insufficient to satisfy both the claim of the United States and that of the injured party, the claim of the United States will be compromised to the extent required to achieve an equitable apportionment of the available funds.

(ii) If appropriate, a request by the injured party or his attorney for waiver on the ground of undue hardship may be treated initially as a suggestion for compromise with the tortfeasor, and the compromised amount of the claim of the United States will be determined. In such cases, RJA's may make offers of compromise within their delegated authority. RJA's may also make counteroffers within their delegated authority to offers of compromise beyond their delegated authority. If settlement within the limits of delegated authority is not achieved, the claim will be referred to higher authority.

(iii) When time is a factor, SJA or major overseas command staff JA's may make telephonic delegation within their compromise authority on a case by case basis. When such verbal delegations are made, they will be confirmed in writing and the writing included in the case file.

(3) *Waiver.* (i) The authority delegated in paragraph (c) of this section to waive claims for the convenience of the Government will be exercised in accordance with standards set forth in 4 CFR part 103.

(ii) If the injured party or his attorney requests waiver of the full or any compromised amount of the claim on the ground of undue hardship, and the request may not be appropriately treated under paragraph (d)(2)(ii) of this section, the file will be forwarded to appropriate major overseas command claims authority or Commander, USARCS. For the purpose of evaluation of the request for waiver, the file will include detailed information concerning the reasonable value of the injured party's claim for permanent injury, pain and suffering, decreasing earning power, and other items of special damages,

pension rights, and other Government benefits accruing to the injured party; and the present and prospective assets, income, and obligations of the injured party, and those dependent on him.

(iii) In the event an affirmative determination is made by TJAG that, as a result of the collection of the Government's claim the injured party has suffered an undue hardship, the RJA will be authorized to direct issuance of the amount waived to the injured party.

(4) A file forwarded to higher authority for waiver of compromise consideration will contain a memorandum by the RJA giving his assessment of the case and his recommendation with regard to the approval or denial of the requested compromise or waiver.

(e) *Only the Department of Justice may approve claims involving.* (1) compromise or waiver of a claim asserted for more than $40,000 exclusive of interest, penalties or administrative fees,

(2) Settlement actions previously referred to the Department,

(3) Settlement where a third party files suit against the United States on the injured party arising out of the same incident.

[FR Doc. 89-25324 Filed 10-26-89; 8:45 am]
BILLING CODE 3710-08-M

federal register

Friday
October 27, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, and 135
Independent Power Source for Public Address System in Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121 and 135

[Docket No. 24995; Amdt. Nos. 25-70, 121-209, 135-34]

RIN 2120-AB77

Independent Power Source for Public Address System in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments to the airworthiness standards for transport category airplanes and the operating rules for air carrier and air taxi operators of such airplanes ensure the availability of the public address (PA) system during emergency conditions by requiring an independent PA system power source. They are intended to increase airplane safety by facilitating the rapid evacuation of passengers under such conditions. These amendments are applicable to airplanes that are required to have a PA system for use in air carrier, air taxi, or commercial service and that are manufactured on or after a specified date, regardless of the date of application for type certificate. These amendments do not apply to airplanes operated by persons other than air carriers, air taxis, and commercial operators.

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Hall, FAA, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 17900 Pacific Highway South, C-68966, Seattle, WA. 98168; telephone: (206) 431-2143.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 86-5 (51 FR 19140; May 27, 1986), and a correction notice published June 13, 1986 (51 FR 21563). Notice 86-5 proposed, in part, an amendment to part 25 to specify that any public address (PA) system which is required for use in air carrier or air taxi service must be powered by a source that is: (1) Independent of engine and auxiliary power unit (APU) operation, the forward motion of the airplane, and all normal means used by the flightcrew for power source disconnection; and (2) capable of powering the PA system for at least 10 minutes, including an aggregate time duration of at least 5 minutes of announcements made by flight and cabin crewmembers. In determining this capability, all loads which may remain powered by the same source when all other power sources become inoperative would have to be considered. In addition, if the same source is required for emergency power for loads essential to safety of flight or required during emergency conditions, it would also have to be capable of powering the added PA system load for an additional time duration that is appropriate or required for those essential or emergency loads. The proposed rule provided that in all cases the PA system load would be considered as that which exists during its standby state, except for an aggregate time duration of at least 5 minutes of announcements.

Notice 86-5 also proposed to amend § 25.1411(a)(2) to clarify that the PA system microphone accessibility requirement is applicable only when a PA system is required by this chapter.

In addition, Notice 86-5 proposed an amendment to § 121.318 which would incorporate the provisions of the proposed amendment to part 25 by reference and thereby require certain airplanes used in air carrier service to comply with the new standards of part 25 if they are manufactured a year or more after the effective date of the amendment. Because § 135.149(d) incorporates the provisions of § 121.318 by reference, the proposed new standards would be applicable to certain airplanes used in air taxi service as well, if they are manufactured on or after the same date.

The proposed new § 25.1423, in which the new standards would be contained, would allow innovation in providing an acceptable power source; however, as a matter of practicality, the normal airplane battery or another battery would most likely be used.

In regard to the new § 25.1423, as proposed, the notice explained that: (1) The expression "all normal means used by the flightcrew for power source disconnection" means all switches or like devices provided for that purpose, including, but not necessarily limited to, the generator, APU, and battery switches; (2) the use of this expression does not establish any requirements pertaining to the disconnection or connection of loads, however accomplished; (3) the deactivation of circuit breakers is not considered to be a normal means used for power source disconnection; and (4) the expression "standby state" means that condition during which power for making announcements is provided to the PA system but announcements are not being made.

The notice further explained that: (1) Power dependent on engine or APU operation would not be acceptable because the engines and APU would not be operating on the ground during many emergency conditions; (2) power dependent on the forward motion of the airplane, which might be provided by a ram air turbine, would not be acceptable because it would not be available on the ground during either normal or emergency conditions; (3) the proposal would not affect the capability of the flightcrew to disconnect the PA system by using its electrical switch or circuit breaker(s) either to clear electrical faults and protect the airplane and occupants against smoke or fires in the PA system (or its wiring) or to conserve the PA system's power source capacity for other loads powered by the same source that are essential to safety of flight or of higher priority during emergency conditions; and (4) the megaphones presently required by § 121.309(f) could not serve as an adequate means of communication. Sections 121.318(b)(1) and 135.149(d), by reference, require the means of communication to be accessible for immediate use from each of two flight crewmember stations in the pilot compartment. As further explained in the notice, such use of the megaphones by the flightcrew is not considered feasible in view of the high workload during emergency conditions, the directionality of megaphone output relative to the flightcrew's forward location and forward-facing position, and the fact that the flight compartment door is normally locked.

The notice expressly requested comments on the proposed time duration for announcements of at least 5 minutes, and on the possible need for operational procedures or flight or cabin crew training to prevent undisciplined use of the PA system during emergency conditions which could result in a hazardous, premature depletion of its power source capacity.

Discussion of Comments

One commenter states that these proposed amendments should be considered as part of a total package of proposals involving crashworthiness that the FAA has under study, which includes a proposal to require "push-to-talk" switches for PA system handset microphones and a possible draft advisory circular pertaining to PA system training and the use of megaphones. The FAA disagrees. Because those other proposals are wholly or largely unrelated to the PA

system power source, there would be no significant cost advantage in complying with those proposed standards, should they be adopted, at the same time. Furthermore, combining these proposed amendments with other proposals currently under consideration would unduly delay the safety benefits expected to result from this proposal.

Several commenters question whether or not the proposed amendments would actually result in an increase in emergency cabin evacuation safety. One commenter states that the FAA had provided no quantitative measure of safety improvement, based on demonstrated service experience showing that fatalities or injuries had occurred specifically because a required PA system was not operable during an emergency condition, and that the qualitative justification "lacks persuasiveness." In contrast, other commenters, including the National Transportation Safety Board (NTSB), support the FAA's position that an operable PA system would provide a definite increase in safety. The FAA concurs that the available quantitative data are limited; however, none of the commenters provided convincing reasons as to why this increase in safety would not be realized.

Several commenters state that the portable megaphones required by § 121.309(f) are the primary means for directing emergency evacuations in airplanes operated in air carrier service, and that the proposed amendments are, therefore, unnecessary. The FAA does not concur that megaphones are the primary means for directing evacuations nor that, for reasons stated above in the Background Section, they could serve as adequate means of communication in the event the PA system is disabled. The FAA also notes that portable megaphones may not even be aboard some airplanes operated in air taxi service, because they are not required for those airplanes.

Several commenters express a desire for this proposal to be applied retroactively to existing airplanes. Conversely, other commenters express their concern that the adoption of the proposed amendments would lead to later proposals to apply them retroactively. While a retroactive requirement would be beyond the scope of Notice 86–5 and could not be considered at this time, it must be noted that the FAA did propose a retroactive requirement in Notice 81–1 (46 FR 5487; January 19, 1981). That proposal was later withdrawn because comments showed that it would not be cost-effective. In the absence of any recent information to the contrary, the FAA currently has no plans to again propose a retroactive requirement.

Several commenters object to the proposed amendments, stating that their adoption would result in a mixed fleet, with some airplanes having an independent PA system power source and some not, and that this would cause confusion among flight and cabin crewmembers. They further state that such confusion could cause a hazard if crewmembers were to assume that their announcements would be heard by the passengers, in the mistaken belief that the airplane had an independent power source when, in fact, it did not. The FAA does not concur that such confusion would occur. It is noted that operation with a mixed fleet began around 1965 when a major manufacturer began providing battery power capability to the PA systems in all its large transport airplanes in production at that time, and continued providing it in all such airplanes produced later under amended or new type certificates. The FAA is not aware that any problems occurred during or after the introduction of airplanes with independent power sources for the PA systems.

Several commenters state that if a battery required for emergency power for loads essential to safety of flight or required during emergency conditions were also used as the PA system power source, then discipline must be ensured over the use of the PA system by including appropriate information in the crew operations manual and providing appropriate training to crewmembers. The FAA concurs that such information and training are necessary; however, each operator is required under §§ 121.135(a)(1), 121.417, 135.83(a)(2), and 135.331 to ensure that the crew operations manuals or checklists do include necessary information on the PA system power source, and that flight and cabin crewmembers are adequately trained in emergency procedures. Furthermore, FAA personnel ensure that all affected air carrier and air taxi operators provide all the necessary crew information and training.

In the situation where a battery required for emergency power for loads essential to safety of flight or required during emergency conditions would also be used as the PA system power source, one commenter states that the likelihood that a larger battery capacity would be needed for certain airplanes would be reduced by flight and cabin crew operational procedures and training on disciplined use of the PA system. The FAA concurs; however, the FAA estimates that the proposed amendment would result in a relatively small increase in battery "energy" depletion of approximately 3 ampere-hours. Therefore, the FAA considers that batteries of larger capacity would be required for few, if any, airplanes.

Several commenters state that if a battery required for emergency power for loads essential to safety of flight or required during emergency conditions were also used as the PA system power source, the PA system should not be required to remain operative after disconnecting the battery with its switch, because this design could result in partial or complete battery discharge while the airplane is parked and possibly at other times. According to the commenters, this would be a hazard in itself and would cause unnecessary and expensive battery maintenance. Two commenters state that one possible means to prevent such discharge, an additional switch connecting the PA system to the unswitched or "hot" battery bus, would increase system complexity and therefore decrease reliability, and also add to crew workload. Another commenter states that there must be a means to disconnect power from the PA system during emergency conditions such as electrically caused smoke, but that the proposed rule does not ensure it. The FAA agrees with these comments. After further consideration, the FAA has determined that the regulation should not require the PA system to have a higher priority for power than loads essential to safety of flight or other loads required during emergency conditions, and that it should not, in effect, prohibit providing the flightcrew with a ready means to disconnect the PA system concurrently with other loads after, or in anticipation of, the occurrence of electrical faults or electrically caused smoke or fires. For these reasons, § 25.1423, as adopted, specifies that a required PA system must be powerable, in flight or stopped on the ground, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation. This language does not preclude loss of power to the PA system as a consequence of disconnecting the battery with its switch. The final rule will not result in unnecessary battery discharges and associated hazards, and will not increase battery maintenance costs above present levels.

One commenter states that the proposed new § 25.1423 is ambiguous as to whether it would require automatic switching. Another commenter states that any switching required to connect

the PA system to the independent power source should be automatic, so as not to increase crew workload. The notice was very specific in stating that the proposed § 25.1423 would not establish any requirements pertaining to the disconnection or connection of loads, however accomplished. Furthermore, although not stated in the notice, the proposed new § 25.1423 was not intended to establish any requirements pertaining to the connection of power sources, such as by using emergency power switches. Because these comments go beyond the scope of the notice, they cannot be considered at this time. In addition, the FAA considers that the capability to restore power to the PA system by a manual switching operation is a considerable improvement over having no means at all to restore it. Furthermore, requiring automatic switching for the PA system would be inconsistent with other emergency operations, such as loadshedding, which are not required to be automatic.

One commenter asks whether the amendments would apply only to airplanes that are newly manufactured after the specified date, or if they would also apply to earlier airplanes that are modified or remanufactured after that date to seat more than 19 passengers. Airplanes manufactured prior to the specified date and later modified to seat more than 19 passengers would not have to comply, regardless of when they are modified. It must be noted, however, that airplanes manufactured after the specified date with 19 or fewer passenger seats would have to comply if they are modified later to seat more than 19 passengers.

One commenter suggests that the language in § 135.149(d), "* * * a passenger seating configuration * * * of more than 19 * * *" be changed to read identically to that in § 121.318(a), "* * * a passenger seating capacity of more than 19 * * *" so as to base the requirements for air taxi operators, as well as for air carrier operators, on the capacity for installing seats, rather than on the actual seating configuration as required by § 135.149(d). The suggested change would have to be the subject of future rulemaking because it goes beyond the scope of Notice 86–5.

One commenter states that certain language in the proposed amendment to § 25.1411(a)(2) would differ from the corresponding language in the proposed amendment to § 121.318(b)(2). The commenter appears to suggest that the language should be identical. Actually, there are minor editorial differences which existed previously between those sections and are not part of the proposed amendments. Nevertheless, it has been brought to the attention of the FAA that both sections are ambiguous in regard to the number of microphones required for adjacent exits. Since there has been considerable confusion as to the number of microphones intended by those sections, editorial changes have been made to each section to clarify that one microphone may serve two adjacent exits. These are nonsubstantive changes which place no additional burden on any person because they reflect the actual intent and are consistent with past FAA interpretation of the two sections.

In regard to the proposed compliance time of 1 year for newly manufactured airplanes, one commenter states that additional time might be needed in order for the Airlines Electronic Engineering Committee (AEEC) to revise PA system equipment characteristics. The FAA disagrees that compliance is dependent on such a revision because a large part of the present fleet has already been equipped with PA system installations that would comply with § 25.1423 without benefit of the revision.

Comments are divided on the proposed requirement for a time duration of at least 10 minutes of PA system operation (which includes at least 5 minutes of announcements). In this regard, one commenter suggests that 30 minutes should be required. The FAA considers that 10 minutes would be sufficient for most emergency conditions. Additional duration would, in most cases, be provided inherently because the same source that provides emergency power to instrument displays and other equipment essential to safety of flight during instrument meteorological conditions would also usually be used to power the PA system. Accepted design practice for compliance with §§ 25.1333(b) and 25.1309(b) for these instruments and equipment would usually ensure at least 30 minutes of PA system power availability, including at least 5 minutes of announcements.

In regard to the proposed requirement for a time duration of at least 5 minutes of announcements made by flight and cabin crewmembers, two commenters state that they do not consider this amount of time to be adequate. Since the two commenters did not provide compelling reasons as to why 5 minutes would not be sufficient, the FAA concurs with the other commenters who believe that 5 minutes is sufficient.

As noted above, the requirements of § 121.318 are presently incorporated by reference in § 135.149. Since the time Notice 86–5 was prepared, it has come to the attention of the FAA that the practice of incorporating certain provisions of part 121 in part 135 by reference may cause confusion. In order to preclude any confusion in this regard, part 135 is amended to include the requirements of § 121.318 and related § 121.319 explicitly rather than by reference. This is a nonsubstantive editorial change that places no additional burden on any person.

Except as discussed above, the amendments are adopted as proposed in Notice 86–5.

Regulatory Evaluation

This document summarizes the final cost-benefit assessment of a rule requiring an independent power source for the public address (PA) system in newly manufactured transport category airplanes that are required to have such systems by existing operating rules. The objective of this rulemaking is to ensure that the PA system is available to initiate and direct emergency evacuations and provide instructions to passengers during emergency conditions.

In response to several public comments solicited by the FAA in the Notice of Proposed Rulemaking (NPRM), the FAA has revised this final rule to ensure that disconnection of the airplane battery with its switch would not preclude shutting off power to the PA system. This revision is intended to allow the PA system to be shut off as the battery is disconnected with its switch, in order to prevent the possibility of battery discharges while the airplane is parked. The revised rule also responds to concerns in several of the comments about potential additional costs, by effectively eliminating the need for additional maintenance checks and costs resulting from depleted batteries.

The FAA has updated the economic analysis of this rule from the analysis performed for the NPRM issued in May 1986, based on new information and data received since then. On the basis of the information that is currently available, the FAA concludes that this rule is cost-effective.

Costs

This amendment should have some cost impact on one of the two major U.S. manufacturers of transport category airplanes with more than 19 seats. The airplanes produced by the other manufacturer already meet the new standards. The other manufacturer will therefore not incur any additional costs.

The manufacturer not currently in compliance had indicated that the most cost-effective method of complying with

this rule would be to change the type design to locate the PA system circuit breaker at the battery bus. For the affected airplanes, the existing battery system would be sufficient to provide an independent power source for the PA system.

After consultation with industry and other sources, the FAA has determined that approximately 400 design and engineering hours would be necessary for such a redesign. The FAA has adopted the conservative assumption that all of the design and engineering costs will be incurred in the year after this rule is issued, rather than spread out over future years; design and engineering costs therefore are not discounted in this analysis. The estimate of required engineering time has been adjusted upward to 437 hours to account for leave and other absences.

An appropriate rate for valuing engineering hours is $54.58 per hour, after overhead multipliers and fringe benefit factors have been applied to the current average hourly salary figure for aerospace engineers. Total cost for design and engineering is therefore $23,850, incurred in the first year after issuance of this rule.

The FAA estimates that the redesign of the circuit connecting the public address system to the airplane's main battery would add at most $500 in wiring and additional equipment to the production cost of each airplane. Additional labor required for installation is expected to be negligible.

The present value of the total cost of compliance with this regulation between 1988 and the year 2000 is expected to be $192,744, based on a 1987 production forecast of the affected types of airplanes.

Benefits

There have been several accidents over the last two decades in which injuries or fatalities may have resulted from a malfunction or disconnection of the public address system on U.S.-operated transport category airplanes. The National Transportation Safety Board recommended in 1974, 1979, and 1981 that the FAA mandate an independent power source for the public address system in such airplanes, stressing that the availability of the PA system is vital for directing emergency evacuations and providing pre-impact instruction.

The extent to which the safety of passengers would be enhanced by compliance with this rule cannot be quantified. Nonetheless, the $192,744 total cost of this regulation would be more than offset if as few as 16 minor injuries, each valued at $21,000, 7 serious injuries, each valued at $54,000, or one fatality, valued at $1 million, were prevented between the date of enactment of this rule and the year 2000. Potential benefits, as well as costs, have been discounted over time in this determination.

It is reasonable to conclude that such a small number of injuries or fatalities could be prevented in a single accident, particularly if the circumstances involve the possibility of fire on the ground. In such emergency situations, the ability of the flight and cabin crew to brief the passengers on emergency procedures just before and once the airplane has landed could well save lives and prevent injuries, if the time required for egress from the airplane were consequently reduced.

Trade Impact Assessment and Regulatory Flexibility Analysis

This rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. Furthermore, this rulemaking is expected to cause no significant impact on small entities, since the manufacturer of the transport category airplanes affected by this regulation is a large manufacturer according to the FAA's size threshold criterion.

Federalism Implications

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. In addition, the amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the U.S. Since the amendment concerns a matter on which there is substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures. In addition, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. A regulatory evaluation of this action, including a Regulatory Flexibility Determination and a Trade Impact Assessment, has been placed in the regulatory docket. A copy of this evaluation may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects:

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Airplanes, Aviation safety, Common carriers, Safety, Transportation.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aircraft, Airplanes, Aviation safety, Safety, Transportation.

Adoption of the Amendments

Accordingly, parts 25, 121 and 135 of the Federal Aviation Regulations (FAR), 14 CFR parts 25, 121, and 135, are amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1982); and 49 CFR 1.47(a).

2. By amending § 25.1411 by revising the paragraph heading for (a) and paragraph (a)(2) to read as follows:

§ 25.1411 General.

(a) *Accessibility requirements.* * * *

(2) If a public address system is required by this chapter—

(i) For each required floor-level passenger emergency exit which has an adjacent flight attendant seat, there must be a public address system microphone which is readily accessible to the seated flight attendant, except that—

(ii) One microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated flight attendants.

* * * * *

3. By adding a new § 25.1423 to read as follows:

§ 25.1423 Public address system.

A public address system required by this chapter must be powerable, in flight

or stopped on the ground, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation, for—

(a) A time duration of at least 10 minutes, including an aggregate time duration of at least 5 minutes of announcements made by flight and cabin crewmembers, considering all other loads which may remain powered by the same source when all other power sources are inoperative; and

(b) An additional time duration in its standby state appropriate or required for any other loads that are powered by the same source and that are essential to safety of flight or required during emergency conditions.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

4. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

5. By revising § 121.318 to read as follows:

§ 121.318 Public address system.

No person may operate an airplane with a seating capacity of more than 19 passengers unless it is equipped with a public address system which—

(a) Is capable of operation independent of the crewmember interphone system required by § 121.319, except for handsets, headsets, microphones, selector switches, and signaling devices;

(b) Is approved in accordance with § 21.305 of this chapter;

(c) Is accessible for immediate use from each of two flight crewmember stations in the pilot compartment;

(d) For each required floor-level passenger emergency exit which has an adjacent flight attendant seat, has a microphone which is readily accessible to the seated flight attendant, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated flight attendants;

(e) Is capable of operation within 10 seconds by a flight attendant at each of those stations in the passenger compartment from which its use is accessible;

(f) Is audible at all passenger seats, lavatories, and flight attendant seats and work stations; and

(g) For transport category airplanes manufactured on or after November 27, 1990, meets the requirements of § 25.1423 of this chapter.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

6. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

7. By amending § 135.149 by removing paragraph (d) and marking it [Reserved].

§ 135.149 Equipment requirements: General.

* * * * *

(d) [Reserved]

* * * * *

8. By adding a new § 135.150 to read as follows:

§ 135.150 Public address and crewmember interphone systems.

No person may operate an aircraft having a passenger seating configuration, excluding any pilot seat, of more than 19 unless it is equipped with—

(a) A public address system which—

(1) Is capable of operation independent of the the crewmember interphone system required by paragraph (b) of this section, except for handsets, headsets, microphones, selector switches, and signaling devices;

(2) Is approved in accordance with § 21.305 of this chapter;

(3) Is accessible for immediate use from each of two flight crewmember stations in the pilot compartment;

(4) For each required floor-level passenger emergency exit which has an adjacent flight attendant seat, has a microphone which is readily accessible to the seated flight attendant, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated flight attendants;

(5) Is capable of operation within 10 seconds by a flight attendant at each of those stations in the passenger compartment from which its use is accessible;

(6) Is audible at all passenger seats, lavatories, and flight attendant seats and work stations; and

(7) For transport category airplanes manufactured on or after [insert a date one year after the effective date of this amendment], meets the requirements of § 25.1423 of this chapter.

(b) A crewmember interphone system which—

(1) Is capable of operation independent of the public address system required by paragraph (a) of this section, except for handsets, headsets, microphones, selector switches, and signaling devices;

(2) Is approved in accordance with § 21.305 of this chapter;

(3) Provides a means of two-way communication between the pilot compartment and—

(i) Each passenger compartment; and

(ii) Each galley located on other than the main passenger deck level;

(4) Is accessible for immediate use from each of two flight crewmember stations in the pilot compartment;

(5) Is accessible for use from at least one normal flight attendant station in each passenger compartment;

(6) Is capable of operation within 10 seconds by a flight attendant at each of those stations in each passenger compartment from which its use is accessible; and

(7) For large turbojet-powered airplanes—

(i) Is accessible for use at enough flight attendant stations so that all floor-level emergency exits (or entryways to those exits in the case of exits located within galleys) in each passenger compartment are observable from one or more of those stations so equipped;

(ii) Has an alerting system incorporating aural or visual signals for use by flight crewmembers to alert flight attendants and for use by flight attendants to alert flight crewmembers;

(iii) For the alerting system required by paragraph (b)(7)(ii) of this section, has a means for the recipient of a call to determine whether it is a normal call or an emergency call; and

(iv) When the airplane is on the ground, provides a means of two-way communication between ground personnel and either of at least two flight crewmembers in the pilot compartment. The interphone system station for use by ground personnel must be so located that personnel using the system may avoid visible detection from within the airplane.

Issued in Washington, DC, on October 20, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–25329 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–13–M